

City of Houston, Texas, Ordinance No. 2000-1115

AN ORDINANCE AMENDING CHAPTER 40 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO EXCAVATING IN THE PUBLIC WAY; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the City of Houston is a municipal corporation organized under the Constitution and the general and special laws of the State of Texas and exercises powers granted by the City's Charter and the provisions of Article XI, Section 5 of the Texas Constitution; and

WHEREAS, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety, and welfare of the public; and

WHEREAS, the City Council finds that the City and other public and private entities, including but not limited to Harris County, the Texas Department of Transportation, and the Metropolitan Transit Authority of Harris County, Texas, are performing street reconstruction and resurfacing projects in the public way, and that the City and private owners are installing and maintaining or are proposing to install and maintain facilities in the public way; and

WHEREAS, the City Council finds that a need exists for an established procedure for coordinating and scheduling street work projects with the installation and maintenance of facilities in the public way; and

WHEREAS, the City Council finds that the methods used by the owners of facilities for the installation and maintenance of facilities in the public way are sometimes not in accordance with standard City specifications and therefore result in damage to the structural integrity of the public way and in interference with the public's use of the public way; and

WHEREAS, the City Council finds that it is in the public interest to provide for coordination among all parties making excavations by establishing or identifying a database setting forth business plans with the intent to facilitate the combination of work efforts wherever possible and to avoid excavations in recently constructed or reconstructed public ways wherever possible; and

WHEREAS, the City Council finds that, in order to promote the health, safety, and welfare of the public, it is desirable to adopt this Ordinance in order to:

1. Provide a means for controlling the excavation and restoration of the public way whereby the structural integrity of the

public way is maintained in accordance with acceptable standards and specifications;

1. Provide for safe and orderly movement of vehicular traffic and pedestrians on the public way; and
1. Provide a means whereby the public is notified of excavations in the public way and of the responsible party; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted.

Section 2. That Article V of Chapter 40 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“ARTICLE V. EXCAVATION IN PUBLIC WAY

DIVISION 1. GENERALLY

Sec. 40-121. Definitions.

As used in this article, the following terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

Applicant means any person who seeks a permit for an excavation.

Backfill means excavation fill material meeting city specified quality requirements or the placement thereof.

Construction standards means the *City of Houston Standard Specifications for Wastewater Collection Systems, Water Lines, Storm Drainage, and Street Paving* and the *City of Houston Standard Construction Details for Wastewater Collection Systems, Water Lines, Storm Drainage, and Street Paving* as they may be amended from time to time by the department of public works and engineering and approved by the city engineer.

Emergency means an unforeseeable event or occurrence that endangers health, life, or property, or a situation in which public need for uninterrupted utility service requires immediate corrective action to restore services.

Excavation means an activity that cuts, penetrates, or bores under any portion of the public way that has been improved with a paved surface for street, sidewalk, surface drainage, or related public transportation infrastructure purposes. The term includes but is not limited to cutting, tunneling, jacking and boring, backfilling, restoring, and repairing the public way. The term does not include a transportation improvement; however, it does include excavations that are undertaken for the improvement or maintenance of publicly owned utility systems, such as water and wastewater lines and facilities. The term also does not include utility maintenance or other activities that are performed within already existing structures, vaults, conduits, or cable ways that are located underneath street improvements, provided that any access required for the work is obtained through manholes, or other previously constructed entrances that may be utilized without cutting or penetrating any pavement or other street improvement.

Facility means any structure, device, or other thing whatsoever that may be installed or maintained in, on, within, under, over, or above a public way by an excavation.

Inspection means the inspection of an excavation by any person approved by the city engineer to determine compliance with this article.

Owner means a person, including the city, who is the owner or will, following the completion of the installation, become the owner of any facility that is installed or is proposed to be installed or maintained in the public way.

Permit means a current and valid authorization issued under division 2 of this article.

Permittee means a person who holds a permit; the singular term includes the plural if two or more persons jointly hold the permit, where applicable.

Public way means any public street right-of-way located in the city, including the entire area between the boundary lines of every way (including but not limited to roads, streets, alleys, highways, boulevards, bridges, tunnels, or similar thoroughfares), whether acquired by purchase, grant, or dedication and acceptance by the city or by the public that has been opened to the use of the public for purposes of vehicular travel.

Public way construction entity means the City of Houston, the Metropolitan Transit Authority of Harris County, Texas, the Texas Department of Transportation, Harris County, Harris County Flood Control District, or any other public entity performing or causing to be performed transportation improvement construction or construction-related activities in public ways.

Traffic-control device means a traffic sign, signal, or marking that is placed and maintained in accordance with state law and this Code.

Transportation improvement means work undertaken by or pursuant to contract for the state or a political subdivision of the state for the purpose of improving or maintaining public way transportation and related storm drainage and street lighting infrastructure.

Sec. 40-122. Prohibited activities.

(a) It shall be unlawful for any person to excavate or cause an excavation within the city unless the person is a permittee to whom a permit has been issued for the excavation pursuant to this article.

(b) It shall be unlawful for a permittee to excavate or cause an excavation within the city in violation of any term of a permit issued pursuant to this article.

(c) It shall be unlawful for any permittee to fail to exhibit a permit upon request as required by section 40-142 of this Code. In any prosecution under this article, it shall be presumed that there is no permit if the permit is not properly exhibited.

(d) It is an affirmative defense to prosecution under subsections (a) and (c) above that the excavation was begun in response to an emergency and that a permit was timely applied for in compliance with section 40-139 of this Code.

(e) It is an affirmative defense to prosecution under this section that the excavation is being performed by a public way construction entity or its contractor in connection with a transportation improvement and that the owner, with the consent of the public works construction entity, has retained the public works construction entity or its contractor to install the facility concurrently with the making of the transportation improvement.

Sec. 40-123. Provisions cumulative.

(a) The provisions of this article are cumulative of all other requirements of this Code and other laws, including, without limitation, building and fire codes, utility franchises, as well as all applicable state and federal laws and regulations. Compliance with this article does not excuse compliance with any other law, and permittees are

additionally required to obtain any other permits, licenses, and authorizations required by law, including but not limited to utility franchises, permits, licenses, and authorizations that are required to be obtained from the city, the Texas Department of Licensing and Regulation, the Texas Public Utility Commission, and the Texas Underground Facility Notification Corporation or any other appropriate governmental agency. However, to the extent that any provision set forth in this article may not be imposed upon any person because its imposition would be inconsistent with a controlling state or federal law, then this article shall be construed and applied in a manner that conforms with the applicable state or federal law.

(b) To the extent that any other city permit or authorization is required for work that is also governed by this article, the director of public works and engineering shall, to the extent practicable, devise consolidated application forms and issue the required permits or authorizations on a combined basis.

Sec. 40-124. Penalty.

Violation of this article is unlawful. Any person who violates any provision of this article shall be guilty of an offense and, upon conviction thereof, shall be punished as provided in section 1-6 of this Code. Each and every day that any violation continues shall constitute a separate offense and shall be punishable as such.

Sec. 40-125. No private rights in public way.

Nothing in this article shall be construed to give any person or permittee any property right in or to the use of the public way. All permits issued and held under this article shall be subject to the superior right of the public to control the use of the public way and ensure the safe and orderly movement of traffic.

Sec. 40-126. Appeals; hearing.

Any person whose permit is denied or who is otherwise aggrieved by a notice, action, or decision of the city engineer hereunder shall, upon written request, be entitled to a hearing to be conducted by a hearing officer designated by the director of public works and engineering, who shall promulgate rules for hearings. The decision of the hearing officer shall be final. Where time is of the essence, the aggrieved person may so advise and state the reason therefor in the request and, to the extent reasonably warranted and allowed by the circumstances, an expedited hearing of the issue shall be afforded.

Sec. 40-127. Public entities not exempt.

In addition to their application to other persons, the provisions of this article are applicable to excavations made by the city and its contractors, as well as to excavations made by or on behalf of other governmental entities and subdivisions, to the extent of

the city's police power jurisdiction. In connection with excavations made by the city, the city engineer may waive compliance with insurance and other requirements that have no practical application as applied to the city.

Sec. 40-128. Rules and regulations.

(a) The director of public works and engineering is authorized to promulgate rules and regulations regarding any aspect of the operation of this article, including without limitation requirements for drawings and specifications, methods by which excavations will be performed, traffic control procedures, application processing and hearing procedures, debarment procedures, construction management procedures, and inspection procedures. The rules and regulations shall be consistent with applicable federal and state laws, city ordinances, and sound engineering practices and the City Council Committee on Transportation, Technology & Infrastructure shall conduct a public hearing on the proposed rules and regulations not less than 10 days following the publication of notice of intent in a newspaper of general circulation and the proposed rules and regulations shall be approved by a majority vote of the City Council Committee on Transportation, Technology & Infrastructure prior to implementation. The director of public works and engineering shall make copies of the rules and regulations available for inspection in the director's office, and copies may be purchased at the fees prescribed by law.

(b) Before adopting any rules and regulations under subsection (a) or any substantive amendments thereto, the director of public works and engineering shall publish a notice of intent one time in a newspaper of general circulation and shall afford a ten day period in which affected persons may obtain a copy of draft proposals and submit written comments thereon.

Secs. 40-129--40-135. Reserved.

DIVISION 2. PERMITS

Sec. 40-136. Application.

(a) A permit for any excavation shall be obtained by the owner of the facility. If the owner of a facility will not be making the excavation with its own personnel, then the contractor retained to perform the work shall join with the owner as an applicant in obtaining the permit. Where two or more related excavations are being performed as part of the same project, the application and permit may cover the related work, consistent with the regulations issued under section 40-128 of this Code.

(b) Applications for permits shall be submitted to the city engineer, shall be signed and sworn to before an officer authorized to administer oaths by each applicant and shall include the following:

- (1) The name, assumed name, or business name, business type (corporation, partnership, individual/sole proprietor or other) of each applicant;
- (1) Each applicant's mailing address (and street address if different), telephone number, facsimile number, and e-mail address;
- (1) The location, depth, length, and width of each excavation to be made in each block and/or intersection, which may alternatively be set forth on the provided drawings and specifications;
- (1) The purpose of the excavation, including a description of the facilities to be installed, maintained, and/or repaired;
- (1) The method of excavation;
- (1) The proposed excavation start date and duration;
- (1) A statement that each person executing the application is fully authorized to act on behalf of and bind his principal in executing and filing the application;
- (1) A statement that each applicant accepts and obligates itself to the following release and indemnification provisions:

'RELEASE

PERMITTEE AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE PERMIT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

INDEMNIFICATION

PERMITTEE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL

OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS PERMIT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (i) PERMITTEE'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', PRINCIPALS', OR SUBCONTRACTORS OF PERMITTEES' (COLLECTIVELY IN NUMBERED PARAGRAPHS (i)-(iii), "PERMITTEE") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (ii) THE CITY'S AND PERMITTEE'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PERMITTEE IS IMMUNE FROM LIABILITY OR NOT; AND**
- (iii) THE CITY'S AND PERMITTEE'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PERMITTEE IS IMMUNE FROM LIABILITY OR NOT.**

PERMITTEE SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE PERMIT AND FOR FOUR YEARS AFTER THE PERMIT TERMINATES.

WHERE APPLICABLE, THE PROVISIONS OF SECTION 283.057 OF THE TEXAS LOCAL GOVERNMENT CODE SHALL CONTROL IN LIEU OF THE FOREGOING; ADDITIONALLY, TO THE EXTENT THAT THE APPLICANT HOLDS A CURRENT AND VALID UTILITY FRANCHISE FROM THE CITY, THE RELEASE AND INDEMNIFICATION PROVISIONS OF THE FRANCHISE SHALL CONTROL IN LIEU OF THE FOREGOING.'

- (1) The name of the owner of the facility;**
- (1) The 24-hour telephone number at which each applicant's representative who will respond to emergencies may be contacted;**
- (1) The name, mailing address, telephone number, facsimile number, and e-mail address of a person who is authorized to receive all notices authorized to be given by the city under this article to each applicant;**

- (1) Confirmation that all materials necessary for construction will be on hand and ready for use so as not to delay the excavation;
- (1) A transmittal number issued by the Texas Underground Facility Notification Corporation evidencing that the applicant has complied with the Texas Underground Facility Damage Prevention and Safety Act or an assurance that the transmittal number will be provided to the city engineer before the excavation commences;

- (1) Evidence of insurance as required in section 40-147 of this Code;
- (1) Drawings and specifications, as provided in section 40-137 of this Code; and
- (1) The work warranty as required by section 40-140 of this Code.

(c) An application for a permit for an excavation performed pursuant to section 40-139 of this Code shall, in addition to the items required above, also include a written statement:

- (1) Explaining the basis for the emergency actions;
- (1) Describing the excavation being performed;
- (1) Describing any work remaining to be performed in the public way; and
- (1) Stating the time and date when the emergency occurred.

Sec. 40-137. Drawings to accompany application; exceptions.

(a) Each application shall be accompanied by drawings and specifications, which shall show:

- (1) The location of the excavation;
- (1) The method and manner in which the excavation will be performed; and
- (1) The methods by which vehicular and pedestrian traffic will be controlled during the prosecution of the excavation, including any proposed signage, use of flaggers, or use of peace officers to direct traffic.

The drawings and specifications shall be prepared in compliance with all applicable laws, rules, regulations, and construction standards. The director of public works and engineering may approve standard details for frequently encountered types of excavations, and the approved details may be incorporated into drawings and specifications, where applicable.

(b) Consistent with applicable laws, sound engineering practices, and the nature and extent of the excavation, the city engineer may require the drawings and specifications to be sealed by a professional engineer who is licensed in Texas.

(c) An emergency excavation may be commenced under section 40-139 of this Code without submission of drawings and specifications. Consistent with the nature of the emergency and the excavation required, the city engineer shall allow the applicant a reasonable period of time to produce any required drawings and specifications.

Sec. 40-138. Approval of application; issuance or denial of permit; hearing.

(a) The city engineer shall initially review each application to determine whether it is complete. The city engineer shall return an incomplete application with an explanation of the deficiencies. Consistent with the terms of this article, the city engineer shall approve, approve with conditions, or deny each complete application.

(b) If an application is denied, the city engineer shall notify the applicant of the grounds for denial and of the applicant's right to a hearing under section 40-126 of this Code.

(c) Upon approval of an application, the city engineer shall issue a permit. The permit shall include the following:

- (1) Identity of the excavation that is authorized.
- (1) Name, mailing address, telephone number, and e-mail address of permittee and owner.
- (1) Date of issuance.
- (1) Any special conditions applicable to the permit.
- (1) The number of days from date of entry on the public way to final completion to be allowed for the excavation, which shall be determined pursuant to the rules and regulations promulgated under section 40-128 of this Code, taking into consideration the nature and extent of the excavation and the vehicular and pedestrian use of the public way. Where a permit covers two or more excavations, the number of days for final completion may, consistent with the nature of the work, be separately established for each portion of the work.
- (1) Any additional information deemed necessary for compliance with this article.

- (1) A statement that the permit is issued subject to the terms of this article, the rules and regulations promulgated under section 40-128 of this Code, the construction standards, the approved drawings and specifications, and all other applicable requirements.

Sec. 40-139. Applicability of article to emergencies.

Nothing contained in this article shall be construed to prevent any person from making an excavation that is necessitated by an emergency, provided that the owner shall: (1) before the excavation is initiated notify the city engineer by telephone at the 24-hour city response telephone number provided in the procedures established under section 40-128 of this Code and also notify any other city, state, or federal authority required under law to be notified; and (2) apply for a permit for the excavation within 24 hours after the initiation of the excavation or, if the city offices are then closed, within 24 hours after the offices of the city are first opened subsequent to the initiation of the excavation.

Sec. 40-140. Work warranty.

Each applicant shall execute and provide a work warranty in a form approved by the city attorney, which shall be incorporated into the application form. The purpose of the work warranty is to undertake and ensure that the permittee will:

- (1) Timely perform the excavation in accordance with the permit, the drawings and specifications, all applicable laws, rules, and regulations, and the construction standards adopted in or pursuant to this article, subject to remediation as provided in section 40-158 of this Code; and
- (1) Warrant the excavation following its completion for two years, subject to remediation as provided in section 40-159 of this Code.

Sec. 40-141. Permit not transferable; void if excavation not timely commenced.

(a) A permit issued under this division is personal to the permittee and may not be transferred to another person or used by any other person to perform the excavation authorized in the permit.

(b) A permit is valid only for the location(s) described on the application, depicted on the drawings and specifications, and authorized in the permit, and no excavation shall be authorized at any other location without another permit.

(c) Unless sooner extended by the city engineer upon written request and for reasonable cause, a permit shall become void if the excavation is not commenced within 60 days from the date of its issuance.

Sec. 40-142. Record at excavation site; public notice.

(a) A permittee shall, at all times while an excavation is in progress, keep, at the location of the excavation, the original permit (or a copy thereof) and shall, immediately on demand, exhibit the permit upon request to the city engineer or any other person.

(b) Each permittee shall post and maintain notices in the vicinity of the excavation in the time, place, and manner prescribed in the rules and regulations promulgated under section 40-128 of this Code.

(c) Such notice required in paragraph (b) above shall include, but not be limited to, the name of the permittee, the permittee's telephone number, and the city permit number.

Sec. 40-143. Removal or relocation of facilities.

All permittees who place facilities thereby obligate and bind themselves to move or change the location of facilities whenever required or instructed to do so by the city in order to accommodate the construction, repair, or relocation of city infrastructure facilities, and failure to do so shall be unlawful.

Sec. 40-144. Owner business plans; coordination of excavations.

(a) On or before June 1 of each year, owners shall submit a plan of excavations anticipated to be done in the public way during the five year period commencing on July 1 of that year. Additionally, the city engineer shall annually solicit a five year transportation improvement plan from the various public way construction entities. As soon as practicable following receipt and compilation of the plans, the city engineer shall make available for inspection a composite list of all projects and transportation improvements designated in the various plans. The director shall endeavor to cause the composite list to be maintained in the form of a computerized database, which may be maintained by the city or another public entity. Applicants are responsible for keeping themselves apprised of the current status of the list. An owner or public way construction entity may change, add, or delete any project in its five year business plan, and if any modification is made, the owner and/or public way construction entity shall notify the city engineer.

(b) Prior to issuance of a permit, the city engineer shall check the application against the composite list. The city engineer may require owners to (i) coordinate their excavations; (ii) coordinate excavations with transportation improvements that are ongoing or are scheduled by public way construction entities; and (iii) complete

excavations before transportation improvements commence. The city engineer may grant a waiver of coordination requirements for good cause. The city engineer shall consider the following before granting a waiver:

- (1) Effect of each proposed excavation(s) on the surrounding vicinity and on traffic mobility;
- (1) The applicant's need for the facility;
- (1) The need to facilitate the deployment of new technology as directed pursuant to official city policy; and
- (1) Public health, safety, welfare, and convenience.

Sec. 40-145. Newly constructed or reconstructed streets.

(a) Except as provided in subsection (b) below, no permit shall be issued for an excavation in any public way that has been constructed, reconstructed, repaved, or resurfaced in the preceding period of five years, as measured from the date of acceptance by the public works construction entity. Owners shall determine alternative methods of making necessary repairs and facility installations to avoid excavations that are subject to this section.

(b) The city engineer, for good cause, shall grant a variance to an applicant for repair of existing utilities, to respond to emergencies, or to afford an owner the means to provide service to buildings that the owner has no other reasonable means of serving in the determination of the city engineer. Variances shall be granted subject to special conditions that the city engineer determines to be appropriate to the circumstances, such as special coordination with other excavations, special paving requirements, additional soil compaction test reports, or any other requirements needed to restore the integrity of the public way to 'as new' condition. In addition to the information provided on the application, applicant shall provide the following with respect to that part of the public way subject to this provision:

- (1) Reason why the excavation was not performed before or when public way was paved;
- (1) Reason why the excavation cannot be delayed until after the five year period expires; and
- (1) Reason why the excavation cannot be performed at another location or the owner's need cannot be accomplished by a method that does not require excavation.

Sec. 40-146. Defaults; unauthorized excavations.

(a) The city engineer shall not issue a permit to any person who is in default or breach of any obligation to the city under this article on a prior permit or on a warranty obligation under section 40-158 or 40-159 of this Code.

(b) The director is authorized to debar from obtaining a permit any person who has performed an unpermitted excavation or any owner who has knowingly allowed that practice. Any such debarment shall be for a reasonable period of time that is consistent with the nature and circumstances of the alleged transgressions. Regulations shall be issued for debarment under section 40-128 of this Code.

(c) Before invoking the provisions of this section, the city engineer shall provide a written notice to the affected persons and afford them a right to a hearing under section 40-126 of this Code.

Sec. 40-147. Insurance.

(a) As a condition of the issuance of a permit, the applicant shall provide evidence that the applicant holds a current policy of comprehensive general liability insurance covering the excavation, with an endorsement for any liability assumed under this article and policy limits of not less than \$150,000 for property damage, per occurrence, and of not less than \$150,000, per person, and \$500,000, per occurrence, for bodily injury or death. Each policy shall include a provision obligating the insurer to furnish to the city engineer at least 15 days prior written notice of any cancellation.

(b) The failure of the permittee to continuously maintain any required coverage shall cause any permit covered thereby to become invalid. No work may be performed on any excavation at any time when any required proof of insurance coverage is not on file in the city engineer's office. Following notice and an opportunity for a hearing under section 40-126 of this Code, the city engineer shall revoke any permit for which any required proof of insurance is not being maintained.

(c) For joint applications and permits, the coverage required in this section may be provided by a policy jointly covering all of the applicants or by separate proofs of coverage for each applicant or permittee.

Sec. 40-148. Amendments; extensions.

(a) A permit shall no longer be valid if there are material changes to the excavation, including but not limited to a change in the scope of the work or the method of performing the work of such consequence that the drawings and specifications no longer accurately depict the work. An amendment shall be required in order to continue the excavation. To obtain an amendment, the permittee shall submit an application

therefor, including amended drawings and specifications, indicating changes. A permit shall not be amended to include an excavation that is not related to the original permit or to extend the excavation into any geographical area not included in original permit.

(b) For good cause not relating to any fault of the permittee in diligently prosecuting the excavation, the city engineer may extend the number of days allowed in the permit pursuant to section 40-138(c)(5) of this Code for completion of the excavation. Extensions of time under this subsection shall not be regarded as amendments, but shall be noted on the records regarding the permit.

Secs. 40-149–40-155. Reserved.

DIVISION 3. PERFORMANCE OF EXCAVATIONS

Sec. 40-156. Access to fire hydrants.

Each excavation shall be performed so it does not obstruct emergency access to any fire hydrant or public water supply valve.

Sec. 40-157. Crossings; traffic control devices.

It shall be the duty of each permittee to make provisions for the safe crossing of pedestrians and the orderly movement of vehicular traffic. Provisions therefor shall be included in the drawings and specifications for the excavation. Any required traffic control devices shall conform to applicable laws, the *Texas Manual on Uniform Traffic Control Devices*, and any rules and regulations promulgated under section 40-128 of this Code.

Sec. 40-158. Warranty of completion of excavation.

In accordance with the rules and regulations promulgated under section 40-128 of this Code, a permittee shall notify the city engineer before commencing and obtain permission to commence the excavation before it enters into the public way. In connection with the notification and permission, the authorized date of entry on the public way, for purposes of section 40-138(c)(5) of this Code shall be established. In connection with the notification, the permittee shall also furnish the transmittal number required under section 40-136(b)(13) of this Code, if it has not previously been provided. The permittee shall diligently prosecute the excavation to its final completion within the time authorized under the permit. If a permittee commences an excavation and then fails, refuses, or neglects to diligently prosecute or to timely complete the excavation in accordance with the permit and all applicable rules and regulations and the construction standards adopted in or pursuant to this article, the city engineer may, following written notice to the permittee, perform the excavation or cause a city contractor to perform the excavation. The city engineer shall afford the permittee five days' written notice and opportunity to cure before taking over the excavation, unless

the director of public works and engineering determines that hazards to public safety and convenience that are posed by the condition of the excavation require a shorter notice period. The city engineer may charge the cost of having the excavation performed, including related administrative expenses, to the permittee. The city engineer shall so notify the permittee, and the permittee shall be obliged to pay the cost within 30 days following receipt of notification. Disputes over costs assessed shall be subject to the hearing process established under section 40-126 of this Code.

Sec. 40-159. Warranty of excavation; correction of defects.

Each permittee shall warrant its excavations against all defects in workmanship and materials for a period of two years after final completion. Whenever within the one year period any portion of the pavement or surface of any public way excavated under such a warranty is, in the engineering determination of the city engineer, in need of repairs, by reason of any defect in workmanship or materials, the city engineer shall serve upon the permittee a written notice stating the repairs necessary, and requiring the repairs to be made within five days after service of the notice. If the repairs are not timely made, the city engineer shall at once make or cause to the repairs to be made at the expense of the permittee. The expenses, including any related administrative expenses, shall be charged to the permittee, and the permittee shall be obliged to pay the cost within 30 days following receipt of notification. Disputes over costs assessed shall be subject to the hearing process established under section 40-126 of this Code.

Sec. 40-160. Inspections of excavations.

(a) All excavations shall be inspected. Based upon the complexity and nature of the excavation and as specified in the permit, inspections may be required during the performance of the excavation, immediately upon completion of the excavation, or both. Inspections shall be performed at permittee's expense by an approved third party inspector selected by the permittee from a list of competent inspection agencies promulgated by the city engineer. At the city engineer's direction and request, as specified in the permit, the permittee shall arrange for each required inspection, notify the city engineer of the date and time when each inspection will occur, and direct the inspector to provide written inspection results to the city engineer within time limits established by the city engineer.

(b) Consistent with applicable laws, sound engineering practices, and the nature of the excavation, the city engineer may, in addition to or in lieu of the agency inspections called for under subsection (a), require that a permittee, at the permittee's expense, retain a professional engineer licensed in Texas to observe the excavation and, based upon the observations, to provide written certification upon completion of the excavation stating that the public way has been restored in accordance with the drawings and specifications and all other applicable technical requirements.

Sec. 40-161. Damage to facility.

A permittee who, in connection with an excavation, damages another owner's facility shall immediately notify the city engineer and, to the extent that the owner's identity is reasonably determinable, the owner of the damaged facility.

Sec. 40-162. As-built drawings and specifications.

Upon final completion of an excavation, the permittee shall provide to the city engineer a set of as-built drawings and specifications for the excavation, which shall be in a form provided by the rules and regulations promulgated under section 40-128 of this Code. In the event that the work was performed exactly in accordance with the drawings and specifications provided with the permit application, then the permittee may so advise the city engineer in writing, and the previously supplied drawings and specifications will be regarded as the as-built drawings and specifications.

Secs. 40-163–40-167. Reserved."

Section 2a. In connection with the adoption of this Ordinance, two Motions were made that relate to, but did not amend the terms of this Ordinance. They are as follows: Motion No. 2000-1518 states as follows: "Motion to require the application process to be available on line (via the Internet) consistent with provisions already existing in the building permit process."

Motion No. 2000-1515 states as follows: "Motion to request that within 30 days of an Attorney General's opinion, should it be determined that Chapter 283 of the Texas Local Government Code does not require said ordinance to be applied to non telecommunication utilities, the Street Cut Ordinance be returned to Council for consideration of amendments consistent with the Attorney General's opinion."

Section 3. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 4. That this Ordinance shall take effect on the sixtieth day next following the date of its passage and approval by the Mayor. The Director of Public Works and Engineering shall cause permit applications to be accepted and commence issuing permits that will be required under this Ordinance on or before the fifty-fifth day next following the date of passage and approval of this Ordinance. No permit shall be required under Article V of Chapter 40 of the Code of Ordinances, Houston, Texas, as amended in this Ordinance for an excavation that is commenced before the effective date of this Ordinance, provided that the excavation is completed on or before the thirtieth day next following the effective date of this Ordinance; however, any such pre-existing excavation that has not been concluded by that date shall require a permit.

Section 5. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect as provided in **Section 4**, above.

PASSED AND APPROVED this ____ day of _____, 2000.

Mayor of the City of Houston

Prepared by Legal Dept. _____
PRB:asw 12/15/2000 Senior Counsel
Requested by Thomas J. Rolen, P.E., Director, Department of Public Works & Engineering
L.D. File No. 0420000008001